

89-766

Supreme Court, U.S.
FILED

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JOSEPH P. SPANIOL, JR.
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NO. _____

IN THE
Supreme Court of the United States
OCTOBER, 1989 TERM

BARBARA SLAUGHTER,
Petitioner

v.

AT & T INFORMATION SYSTEMS, INC.,
Respondent

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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QUESTION PRESENTED

1. Whether Petitioner's claims against her employer and union were properly characterized by the lower courts as constituting a "hybrid" sec. 301/duty of fair representation cause of action to which *DelCostello's* six-month statute of limitations was applicable.

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STATUTES

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v.

AT & T INFORMATION SYSTEMS, INC.,*
Respondent

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

BARBARA SLAUGHTER petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a - 7a) is not reported. No opinion was issued by the district court. The judgment of the district court (App. B, *infra*, 8a) was entered on December 16, 1988.

* The other party to the proceeding in the court whose judgment is sought to be reviewed was Communications Workers of America, Defendant.

JURISDICTION

A petition for rehearing to the court of appeals was denied on August 8, 1989 (App. C, infra, 9a). The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254.

STATUTES INVOLVED

1. Sec. 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, codified at 29 U.S.C. sec. 185 provides:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

2. Sec. 10(b) of the National Labor Relations Act of 1947, 49 Stat. 453, codified at 29 U.S.C. sec. 106(b) provides:

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the

filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

STATEMENT

Petitioner, a former employee of Respondent, terminated her employment on February 28, 1986. At the time of her termination, she was a non-management employee represented by the Communications Workers of America (CWA). Petitioner claims she was a "surplus union-represented, non-management employee" at the time of her termination as defined in Respondent's written termination plan. As such, she sought termination pay that was denied by Respondent. Petitioner, prior to her termination, requested CWA to file a grievance on her behalf with Respondent to determine her entitlement to termination pay; Petitioner subsequently learned that CWA failed to file a written grievance within the forty-five day period allowed by the termination plan.

Lacking any other remedy, Petitioner brought a state court suit almost two years after her termination against Respondent and CWA alleging certain tort and contract claims, including CWA's alleged breach of duty of fair representation. Respondent and CWA removed the case to federal court on the ground that Petitioner's claims were completely pre-empted under sec. 301 of the Labor Management Relations Act. Subsequently, both defendants moved for summary judgment based upon the untimeliness of Petitioner's suit under the six-month statute

of limitations of sec. 10(b) of the National Labor Relations Act (NLRA), characterizing her claim as a "hybrid" sec. 301/duty of fair representation cause of action found subject to NLRA's limitations period in *DelCostello v. Teamsters*, 462 U.S. 151, 103 S. Ct. 2281, 76 L.Ed.2d 476 (1983). The district court granted summary judgment in favor of Respondent and CWA, and the court of appeals affirmed.

REASONS FOR GRANTING THE PETITION

This case presents a departure from the accepted and usual course of judicial proceedings by the lower courts as to call for an exercise of this Court's power of supervision. The district court, arbitrarily and without sufficient evidence before it on a summary judgment motion, mischaracterized Petitioner's cause of action as a "hybrid" sec. 301/duty of fair representation claim to which the six-month statute of limitations was applicable. The court of appeals, failing and refusing to follow its own analysis set forth in *Daigle v. Gulf States Utilities Co.*, 794 F.2d 974 (5th Cir. 1986), cert. den., 479 U.S. 1008, 107 S. Ct. 648, 93 L.Ed.2d 704 (1986), affirmed the district court summary judgment, holding simply that the "six-month statute of limitations applies to all sec. 301 hybrid actions where a plaintiff has alleged a breach of a collective bargaining agreement as well as breach of the union's duty of fair representation" (App. 6a). With absolutely no analysis, the court of appeals pronounced that Petitioner's claim against Respondent was a "hybrid action to which the six-month statute of limitations applies" (App. 6a). As will be demonstrated, Petitioner's claim is either (1) not a "hybrid action" as a matter of law or (2) not characterizable under the summary judgment

evidence, and thus a material fact issue is presented as to the nature of her action.

DelCostello is, of course, the seminal case wherein this Court first introduced sec. 10(b)'s six-month statute of limitations as a bar to an employee's claim against his employer and union arising from circumstances akin to an unfair labor practice. When an employee brings a suit against his employer resting upon a breach of the collective bargaining agreement, where he is required to exhaust the grievance or arbitration remedies provided in the agreement, this Court held that he could not challenge the results of such remedies unless he sought, in the same action, to show that his union represented him in such grievance or arbitration procedure in "such a discriminatory, dishonest, arbitrary, or perfunctory fashion as to breach its duty of fair representation". *Vaca v. Sipes*, 386 U.S. 171, 87 S. Ct. 903, 17 L.Ed.2d 842 (1967). Finding such claims on the part of an employee not to be the "straightforward breach-of-contract suit" made subject to analogous state law limitations periods in *Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 86 S. Ct. 1107, 16 L.Ed.2d 192 (1966), this Court proclaimed them to be "hybrid sec. 301/fair representation claim(s), amounting to a direct challenge to the private settlement of disputes under the collective bargaining agreement". *DelCostello, supra*, 2291.

Both this Court and the court of appeals recognized that proper characterization of a plaintiff's claim arising from an employment dispute is critical to the outcome of an asserted limitations defense by a defendant. In *IBEW v. Hechler*, 481 U.S. 851, 107 S. Ct. 2161, 2169, 95 L.Ed.2d 791 (1987), this Court rejected the union's contention that the employee's claim could be character-

ized only as a breach of the duty of fair representation when she sued the union in state court on a tort theory. While holding that the employee's claim was wholly preempted by sec. 301, this Court remanded her claim to the court of appeals on her argument that her suit was simply a sec. 301 claim to which an analogous state law limitations period should apply. *Id.* On remand, the court of appeals stated its duty as follows:

"We must adopt a state law limitations period if it provides a direct analogy to the particular sec. 301 claim at issue and if it adequately comports with the policies underlying federal labor law. Otherwise, 'if state law does not afford sufficiently direct guidance,' we are to use sec. 10(b)."

Hechler v. IBEW, 834 F.2d 942, 947 (11th Cir. 1987). Applying a "fluid balancing test", the court of appeals found that Hechler's claim against the union lacked any threat to the stability of federal labor law and applied a state law limitations period for a tort action arising from contract.

While recognizing that this Court distinguished the "hybrid" sec. 301/fair representation claim from the "straightforward sec. 301 breach-of-contract" suit in *Del-Costello*, 462 U.S. at 165, 103 S. Ct. at 2291, *Hechler* clearly established that a breach-of-duty suit in state court against a union does not automatically characterize the plaintiff's claim as a breach of duty of fair representation to which sec. 10(b)'s six-month limitations bar applies. The lower courts in this case simply accepted Respondent's allegation that Petitioner's claim was a "garden variety" hybrid sec. 301/duty of fair representation allegation.

The court of appeals' affirmation of the district court's summary judgment on the stated basis that "(t)he six-month statute of limitations applies to all sec. 301 hybrid actions where a plaintiff has alleged a breach of a collective bargaining agreement as well as breach of the union's duty of fair representation" is inexplicable when the facts of this case are compared to *Daigle v. Gulf States Utilities Co.*, *supra*. Daigle was discharged by Gulf States Utilities Co. (GSU) for violating a company rule. He applied to his union, the International Brotherhood of Electrical Workers (IBEW), for help, and, after investigating, IBEW refused to file a grievance. Daigle subsequently brought suit for (1) breach of collective bargaining agreement against GSU and (2) for IBEW's breach of its implied duty of fair representation. *Id.*, 976. Daigle's claims against GSU and IBEW suffered the same fate as Petitioner's at the district court level, apparently on the same ground that his claims constituted a hybrid sec. 301 action that was time-barred under *DelCostello*. *Id.* The court of appeals commenced its analysis of Daigle's claims by stating:

"We must characterize the appellant's breach of contract and duty of fair representation claims to determine the applicable statute of limitations."

Id., 977. The court recognized that the hybrid sec. 301 suit gains its characterization from the "inextricable inter-dependent" nature of the two causes of action arising from the provisions of the collective bargaining agreement:

"If the arbitration and grievance procedure is *the exclusive and final remedy* for breach of the collective bargaining agreement, the employee may not

sue his employer under sec. 301 until he has exhausted the procedure . . . On the other hand, *if the collective bargaining agreement does not provide that the grievance and arbitration procedure is the exclusive and final remedy for breach of contract claims, the employee may sue his employer in federal court under sec. 301 (citations omitted) and the state statute of limitations applicable to contract breaches applies.*"

Id. (Emphasis added). The court thus remanded *Daigle*'s cause of action because the record did not reflect whether he was required by the collective bargaining agreement to exhaust his grievance and arbitration remedies.

Comparisons between *Daigle* and Petitioner's claims are inevitable and compelling. Even the court of appeals, in a footnote in its opinion (App. 4a - 5a), recognized the similarity of the claims, but for the wrong reason. The court of appeals wholly failed to indulge in even the slightest analysis of the appropriate character of Petitioner's claim; instead, the court merely accepted Respondent's characterization of her claims. What *Daigle* makes clear is that the characterization of Petitioner's claim against Respondent depends entirely upon a review of the grievance and arbitration procedures within the collective bargaining agreement in order to determine whether Petitioner was required to first exhaust her contractual remedies before pursuing her claim in the courts. Both lower courts ignored this procedure, with the result that *DelCostello*'s six-month limitations period was improperly applied.

The applicable portion of the grievance and arbitration procedures of the collective bargaining agreement (App. 10a - 16a) clearly shows that such procedures are not

required to be exhausted by an employee. In fact, the wording of the arbitration provision reflects an intent to be permissive and not mandatory ("either the Union or Management may submit the issue of any such matter to arbitration . . .") (App. 14a). In considering the identical language from the same collective bargaining agreement, the district court, in *Eltsner v. Southwestern Bell Telephone Co.*, 659 F.Supp. 1328, 1338-1339 (S.D. Tex. 1987), held that the agreement did not provide that the grievance procedure was the exclusive and final remedy for the plaintiff's claim of breach of the agreement, and thus his right to sue in court was not barred. In this case, the court of appeals found that Petitioner stated a sec. 301 claim by her suit for termination benefits. Because, as the *Eltsner* court decided, the agreement in question made no provision for finality of the grievance procedures, Petitioner was not required to exhaust her contractual remedies before filing suit against Respondent. As a result, the *Daigle* analysis applies and her claim is subject to an analogous state law limitations period¹ rather than the six months mandated by sec. 10(b).

In sum, Petitioner would echo the sentiments of the court of appeals in *Hechler*:

"the sheer number of cases applying sec. 10(b)'s six-month limitation period to various labor lawsuits indicates that such a brief time has the practical effect of barring many potentially meritorious claims. Until the Supreme Court provides clear instructions

1. Tex. Civ. Prac. & Rem. Code Ann. sec. 16.004 (Vernon's 1986), establishing a four-year limitations period for certain debt actions, has been construed to apply to employment contracts. See *City of Groves v. Ponder*, 303 S.W.2d 485, 488-489 (Tex. Civ. App.—Beaumont 1957, writ ref'd n.r.e.) (construing predecessor statute).

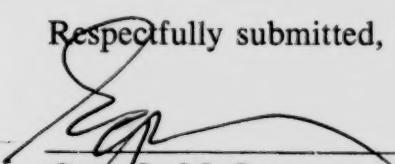
to depart from the general rule of applying analogous state limitations periods to breach-of-contract cases under sec. 301, this court will hold to its narrower reading of *DelCostello*."

Hechler v. IBEW, 834 F.2d at 949.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 89-2058

Summary Calendar

BARBARA SLAUGHTER,
Plaintiff-Appellant,

v.

AT&T INFORMATION SYSTEMS, INC., AND
COMMUNICATION WORKERS OF AMERICA,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-88-0486)

(July 7, 1989)

Before REAVLEY, JOHNSON, and JOLLY, Circuit
Judges.

PER CURIAM:*

Barbara Slaughter appeals from the district court's
summary judgment dismissal of her claims against her

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

employer for breach of contract and against her union for breach of the duty of fair representation. Because we find that the district court did not err in determining that the six months statute of limitations applicable to claims arising under Section 301 of the Labor Management Relations Act time bars the claims, we affirm.

I. BACKGROUND.

In January of 1988, Slaughter filed an action in the district court of Brazoria County, Texas, alleging that her employer, defendant AT&T Information Systems, Inc. (ATTIS), refused to tender termination pay upon her termination in February of 1986. She alleges that ATTIS instead forced her to elect supplemental income protection program benefits. Slaughter claims that at her termination she was a "surplus union-represented, non-management employee" as defined in ATTIS's Termination Payment Plan; as such, she argues, termination pay was appropriate.

After ATTIS's denial of her request for termination pay, Slaughter requested that her union, the Communication Workers of America (CWA), file a grievance on her behalf. In May of 1986, Slaughter learned that no such grievance had ever been filed. Consequently, Slaughter included in her petition an allegation that CWA was negligent in failing to file a grievance on her behalf under the terms of the collective bargaining agreement existing between ATTIS and CWA.

The defendants filed petitions for removal to the federal district court. In addition, defendants filed motions for summary judgment asserting that Slaughter's action was time-barred by the six month statute of limitations applic-

able to section 301 hybrid actions for employer breach of contract and union breach of the duty of fair representation. Slaughter filed a motion to remand and a response to the summary judgment motion. The district court concluded that Slaughter's claims were preempted by Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, and that the action was time-barred by the six month statute of limitations. The district court entered an order in favor of defendants, and Slaughter filed a timely appeal to this Court.

II. DISCUSSION

Summary Judgment

This Court reviews the propriety of a summary judgment under the same standard that governs the trial court's determination. Summary judgment is proper only if, when the evidence is viewed in the light most favorable to the nonmovant, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Bache v. American Telephone and Telegraph*, 840 F.2d 283, 287 (5th Cir.), cert. denied sub nom. *Bankston v. American Telephone and Telegraph*, ____U.S.____, 109 S. Ct. 219 (1988). Slaughter concedes that the action was not filed within six months of CWA's notification that it failed to process her grievance. Slaughter, however, argues that the six month statute of limitations is inapplicable to her action because it is not a section 301 hybrid action; rather, she argues that the claim against CWA is a state law negligence claim for breach of a duty imposed by the collective bargaining agreement. Additionally, she characterizes the claim against ATTIS not as a claim of breach of the collective bargaining agreement, but as a claim for breach of the termination plan agree-

ment. Even if her claim against ATTIS is characterized as a section 301 action, Slaughter maintains that it is not inextricably intertwined with the claim against the union, and, therefore, not governed by the six month statute of limitations. We conclude that the district court properly rejected Slaughter's construction of her claims. The cause falls within the parameters defining section 301 hybrid actions. As such, the six month statute of limitations applied and summary judgment was appropriate.

The Supreme Court, in *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151, 103 S. Ct. 2281, 76 L.Ed.2d 476 (1983), enunciated the six month statute of limitations applicable to section 301 hybrid actions. A section 301 hybrid action is composed of two distinct causes of action: a section 301 action for breach of the collective bargaining agreement brought against the employer, and an action against the union for breach of the duty of fair representation. *Id.* at 164. The two actions are inextricably interdependent because of the relationship between the duty of fair representation and the enforcement of a collective bargaining agreement. *Bache*, 840 F.2d at 287.

In the instant case, Slaughter has alleged that under the terms of the collective bargaining agreement, CWA had a duty to fairly represent her in a grievance proceeding. She further alleged that CWA breached this duty by failing to pursue a grievance on her behalf. This complaint alleges that the union breached its duty of fair representation. *See Vaca v. Sipes*, 386 U.S. 171, 87 S. Ct. 903, 17 L.Ed.2d 842 (1967).¹

1. Slaughter's attempt to distinguish her action from other hybrid claims by pointing out that she is not challenging a private settlement under the agreement because CWA never filed a claim on her

Slaughter relies heavily on the Eleventh Circuit case of *Hechler v. International Brotherhood of Electrical Workers*, 834 F.2d 942 (11th Cir. 1987), *on remand from* 481 U.S. 851, 107 S. Ct. 2161, 95 L.Ed.2d 791 (1987). In *Hechler*, the plaintiff union member sought damages for the union's failure to provide a safe work place as required under the collective bargaining agreement. The Supreme Court held that the state-law tort claim that the union had breached its duty to provide a safe working place was preempted by section 301; however, it remanded the case for a determination of the applicable statute of limitations. On remand, the Eleventh Circuit characterized the claim as a section 301 claim for breach of contract rather than as a claim for breach of the duty of fair representation. The court then analogized the claim to a Florida action for breach of contract and applied Florida's five year statute of limitations since application of the state prescriptive period did not impinge upon federal labor law interests.

The instant case is distinguishable. Slaughter sued ATTIS for breach of contract for its refusal to provide her with termination pay. As a direct corollary of that claim, she alleged that CWA breached its duty under the collective bargaining agreement by failing to file a grievance on her behalf concerning the termination pay dispute. This constitutes a section 301 hybrid claim; Slaughter's claim against the union cannot be characterized as a separate breach of contract as in *Hechler*.

behalf is misplaced. In *Daigle v. Gulf State Utilities Co.*, Local No. 2286, 794 F.2d 974, 977 (5th Cir.), *cert. denied*, 479 U.S. 1008 (1986), this Court held that the six month prescriptive period applied in a case where the union was being sued for failing to file a grievance on behalf of a union member.

Slaughter also attacks the propriety of the district court's implicit finding that her claim against ATTIS constitutes a section 301 action for breach of the collective bargaining agreement. She argues that the claim against ATTIS is merely a state law breach of contract claim. Specifically, she argues that she sued ATTIS solely for breach of the termination plan agreement. This claim that the termination agreement is a separate contract completely independent of the collective bargaining agreement is not persuasive. Not only does the termination agreement more fully describe the termination plan benefits provided for in the collective bargaining agreement, but the termination plan specifically references such agreement. It refers to the collective bargaining agreement for the terms of participation in the plan, eligibility for benefits, and the amount of termination pay benefits. Disputes arising under the plan are also subject to the grievance and arbitration provisions of the collective bargaining agreement. The document is not an independent contract; the action is preempted by section 301.

Additionally, Slaughter asserts that because she did not sue for wrongful termination as the plaintiffs in *Del Costello* did, nor did she seek to challenge the outcome of a grievance or arbitration procedure, the six month statute of limitations is inapplicable to her claim against ATTIS. The six month statute of limitations applies to all section 301 hybrid actions where a plaintiff has alleged a breach of a collective bargaining agreement as well as breach of the union's duty of fair representation. Slaughter's action against ATTIS and CWA is a hybrid action to which the six month statute of limitations applies. Slaughter has admitted that her action was not filed within the

six month period. Consequently, summary judgment was proper.

Sanctions

CWA filed a motion seeking imposition of attorney's fees and double costs as sanctions pursuant to Fed. R. App. P. 38. In *Coghlan v. Starkey*, 852 F.2d 806, 811 (5th Cir. 1988), this Court held that "an appeal is frivolous if the result is obvious or the arguments of error are wholly without merit." Bad faith is not required to establish that an appeal is frivolous; an appeal is deemed frivolous when an unreasonable legal position is advanced in the absence of a good faith belief that it is justified. *Id.* at 814.

In this case, an award of costs and attorney's fees is not appropriate. Although Slaughter's attempt to analogize *Hechler* to the instant case is not persuasive, her argument is not wholly frivolous. We are not willing to impose Rule 38 sanctions in a manner which has the potential to chill the assertion of reasonable legal arguments. Rule 38 sanctions are inappropriate in the instant case.

III. CONCLUSION

Slaughter's argument that her claim does not constitute a section 301 hybrid action is not persuasive. However, the argument is not entirely without merit. Consequently, we affirm the district court's dismissal, but deny appellee's motion for Rule 38 sanctions.

AFFIRMED

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CIVIL ACTION NO. H-88-486

**BARBARA SLAUGHTER,
Plaintiff,**

v.

**AT&T INFORMATION SYSTEMS, et al.,
Defendants.**

FINAL JUDGMENT

Barbara Slaughter takes nothing from AT&T Information Systems, Inc., and Communications Workers of America.

Signed on December 14, 1988, at Houston, Texas.

/s/ **LYNN N. HUGHES**
Lynn N. Hughes
United States District Judge

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 89-2058

BARBARA SLAUGHTER,
Plaintiff-Appellant,

v.

AT&T INFORMATION SYSTEMS, INC., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Texas

ON PETITION FOR REHEARING

(August 8, 1989)

Before REAVLEY, JOHNSON and JOLLY, Circuit
Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed
in the above entitled and numbered cause be and the
same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ **SAM JOHNSON**
United States Circuit Judge
8-4-89

APPENDIX D**COLLECTIVE BARGAINING AGREEMENT****ARTICLE XX****GRIEVANCES**

Section 1. The Union shall be the exclusive representative of all the employees in the Bargaining Unit for the purposes of presenting to and discussing with the Company grievances of any and all such employees arising from such employment; subject always, however, to the provisions of this Agreement, the current Agreement of General Application between the Union and the Company and of any applicable law.

Section 2.

a. Any employee complaint (except those which contemplate treatment or proceedings inconsistent with the terms of a collective bargaining contract or agreement then in effect including proposals for the modification of, or addition to, any such contract or agreement) which is reduced to writing and delivered by a Union representative in accordance with Section 2. b. following, within 45 days of the action complained of shall be considered and handled as a formal grievance.

b. The grievance procedure shall normally consist of three successive steps. Notice of grievances and appeals of decisions made at the first and second steps shall be forwarded in accordance with the following:

Step Number	Company Representative Designated To Receive Grievance
1	Division level manager having supervisory authority over the conditions or circumstances

which gave rise to the grievance. (In the absence of a Division level, the notice of the grievance shall be forwarded to the District level manager having the supervisory authority.)

or

Section Head level manager having supervisory authority over the involved conditions or circumstances if the grievance involves employees in more than one Division organization. If the grievance is initially filed at this level, any appeal of such a decision shall be filed at Step Number 3.

or

Vice President-Personnel or designated representative if the grievance involves employees in more than one Section level organization. If the grievance is initially filed at this level there shall be no successive steps.

- 2 The manager who supervises the individual to whom the first level grievance notice was directed.
- 3 Vice President-Personnel or designated representative.

c. If the grievance involves or affects only employees reporting to a single immediate supervisor, a copy of the notice shall also be forwarded at the same time to such supervisor.

Section 3.

a. The decision made at either of the first two levels of the grievance procedure may be appealed to the next higher level of the grievance procedure provided such appeal is submitted within two weeks of the date the decision is communicated to the Union.

b. A decision at the 3rd level of the grievance procedure or default on the Company's part to meet with the Union, as explained in Section 7, at the 3rd level shall be construed as full completion of the "Formal Grievance" procedure.

c. At the Union's request, the decision of the Company as to grievances submitted shall be confirmed in writing to the Union.

Section 4. So that the Union may present formal grievances to the appropriate Company representative, the Company will notify the Union of changes in Company organization that require a change in the then existing manner of presentation.

Section 5. After a notice as set forth in Section 2. b., above has been received by the Company, the Company will not attempt to adjust the grievance with any employee or employees involved without offering the Union an opportunity to be present.

Section 6. At any meeting held pursuant to Section 2 above, the Company will designate its representative(s) to meet with the aggrieved employee(s), the representative(s) designated by the Union, or both.

Section 7. Meetings at each level of the grievance procedure shall be arranged promptly. If, due to the Company's actions, a mutually agreeable meeting date

is not arranged within two weeks of either the Company's receipt of the initial notification or the appeal of the grievance, the Union may present its original grievance to the next higher level of the formal grievance procedure.

Section 8. The place of the meeting at each level of the grievance procedure shall be mutually agreed upon, with each party giving due consideration to the convenience of the other.

Section 9. Those employees of the Company including the aggrieved employee(s) and the employee representative(s) designated by the Union, who shall suffer no loss in pay for time consumed in, and necessarily consumed in traveling to and from, grievance meetings shall not be more than three at any level of the grievance procedure.

Section 10. At any meeting held under this Article for the adjustment of a grievance or complaint, any party present (including Union or Company representatives) shall be afforded full opportunity to present any facts and arguments pertaining to the matter or matters under consideration. The decision made upon such facts and arguments shall be made as promptly after conclusion of the presentation as may be reasonably and effectively possible.

Section 11. Any complaint which is not delivered in writing by the Union as specified in Section 2 above, shall be handled by the Company as an informal complaint on an informal basis; provided, however, that nothing in this Article shall preclude the Union and the Company from using any other mutually satisfactory and proper method of presentation, discussion, and disposition of grievances.

ARTICLE IV

ARBITRATION

Section 1. If, during the term of this Agreement, with respect to the 1983 Departmental Agreement effective August 7, 1983, between the Union and the Company, and subsequent agreements which by specific reference therein are made subject to this Article, a difference shall occur, between the Union and the Company, and continue after all steps in the "Formal Grievance" procedure established in the 1983 Departmental Agreement shall have been undertaken and completed, regarding,

- a. the true intent and meaning of any specific provision or provisions thereof (except as such provision or provisions relate, either specifically or by effect, to prospective modifications or amendments of such agreement), or
- b. the application of any provision or provisions thereof to any employee or group of employees, and grievances arising from such application, or
- c. the dismissal for just cause of any employee with more than one completed year's net credited service, or
- d. the disciplinary suspension for just cause of any employee

then in any such event, either the Union or the Management may submit the issue of any such matter to arbitration for final decision in accordance with the procedure hereinafter set forth or, where applicable, in accordance with Article V of this Agreement.

Section 2. In the event that either party hereto, within 60 days after completion of the Formal Grievance pro-

cedure aforesaid, elects to submit a matter described in the preceding section to arbitration the parties agree that the matter shall be so submitted, and agree that such submission shall be to one arbitrator. The parties shall endeavor in each instance within a three weeks' period to agree upon the arbitrator, but if unable to so agree, the arbitrator shall be designated by the American Arbitration Association upon the written request of either party. In either such event, the arbitration shall be conducted under the then obtaining rules of the Voluntary Labor Arbitration Tribunal of the American Arbitration Association. Each party shall pay for the time consumed by and the expenses of its representatives, and shall be equally responsible for the fees of the American Arbitration Association, the compensation, if any, of the arbitrator, and any such other general administrative expense that may occur.

After an election to arbitrate, if within 90 days following completion of the Formal Grievance procedure no arbitrator has been agreed upon and no written request has been made upon the American Arbitration Association to designate an arbitrator, then no such matter shall continue to be arbitrable.

Section 3. The arbitrator shall be confined to the subjects submitted for decision, and may in no event, as a part of any such decision, impose upon either party any obligation to arbitrate on any subjects which have not herein been agreed upon as subjects for arbitration; nor may the arbitrator, as a part of any such decision, effect reformation of the contract, or of any of the provisions thereof.

Section 4. The decision of any arbitrator, selected in accordance with Section 2 hereof, shall be final, and the parties agree to be bound and to abide by such decision.

Section 5. If and when notice of termination of this Agreement be given as provided in the Duration Article hereof, any existing dispute described in Section 1 hereof as an appropriate subject for arbitration which is in the process of Formal Grievance negotiation of record prior to the service of such notice of termination, or, if such an existing dispute appropriate under Section 1 hereof shall become a matter of record in the process of Formal Grievance negotiation in the manner and within the time limit prescribed for filing Formal Grievances, then in either such event any such matter may be carried to a conclusion under this Article without regard to the termination of this Agreement.

